

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

|                                       |   |                             |
|---------------------------------------|---|-----------------------------|
| <b>STEVEN G. MILLETT,</b>             | ) |                             |
| <b>MELODY J. MILLETT,</b>             | ) |                             |
| <b>On Behalf Of Themselves and</b>    | ) |                             |
| <b>All Others Similarly Situated,</b> | ) |                             |
|                                       | ) |                             |
| <b>Plaintiffs,</b>                    | ) |                             |
|                                       | ) |                             |
| <b>v.</b>                             | ) | <b>C.A. No.: 05-599-SLR</b> |
|                                       | ) |                             |
| <b>TRUELINK, INC.,</b>                | ) | <b>Class Action</b>         |
| <b>a Trans Union Company,</b>         | ) |                             |
|                                       | ) |                             |
| <b>Defendant.</b>                     | ) |                             |

**PLAINTIFFS' MOTION SEEKING LEAVE TO FILE SUR-REPLY  
WITH REGARD TO DEFENDANT'S MOTION TO DISMISS OR,  
IN THE ALTERNATIVE, TO CONDUCT DISCOVERY ON AND  
TO FULLY BRIEF THE CHOICE-OF-LAW ISSUES IN THIS ACTION**

/s/ Christopher J. Curtin  
Christopher J. Curtin  
DE Bar Id. No. 0226  
Erisman & Curtin  
629 Mount Lebanon road  
Wilmington, Delaware 19803  
Phone: (302) 478-5577  
Facsimile: (302) 478-5494  
Email: ccurtin659@aol.com

and

/s/ Barry R. Grissom  
Barry R. Grissom, Esq.  
KS Bar. Id. No. 10866  
7270 W. 98th Terrace  
Building 7, Suite 220  
Overland Park, Kansas 66212  
Phone: (913) 341-6616

COUNSEL FOR PLAINTIFFS

Named Plaintiffs, Steven G. Millett and Melody J. Millett, by and through their undersigned attorneys, hereby move this Court for leave to file a Sur-Reply regarding Defendant's Motion to Dismiss or, in the alternative, to conduct discovery on and to fully brief the choice-of-law issues in this action. In support of their motion, Plaintiffs state as follows:

On June 9, 2005, Defendant filed its motion to transfer this action from Kansas to Delaware based upon a choice-of-law provision in the contract that is the subject of this action. Pursuant to Defendant's motion, this action was transferred to this Court on August 16, 2005.

On January 13, 2006, Defendant filed its Motion to Dismiss and Opening Brief in support thereof. In its Opening Brief, Defendant argued that Delaware's consumer protection act could not be applied in this case because the misrepresentations alleged by Plaintiffs occurred in California, not Delaware.

On January 27, 2006, Plaintiffs filed their Answering Brief in which they explained that they had stated their consumer protection claims under Delaware law because the transfer order issued by the United States District Court for the District of Kansas directed that all claims be stated under Delaware law. While not conceding that Delaware law is inapplicable, Plaintiffs agreed that California's consumer protection act is the more natural choice in this case given that Defendant's misrepresentations appear to have been made in California. Given the apparent agreement that California law is the more logical choice for Plaintiff's consumer protection claims, Plaintiffs requested leave to amend their Complaint to state their consumer protection claims under California law.

On February 3, 2006, Defendant filed its Reply Brief. In its Reply Brief, Defendant argues that Plaintiffs cannot state their consumer protection claims under California law because Delaware law applies.

Plaintiffs seek leave to file a sur-reply because Defendant, once again, has changed its stance as to which state's law applies in this action. As Plaintiffs noted in their Answering Brief, Plaintiffs keep attempting to state their claims under the law that Defendant claims is applicable, but Defendant keeps changing its mind about which state's law is applicable. In this instance, Defendant has changed its mind twice in the course of briefing its motion to dismiss.

In the alternative, Plaintiffs seek leave to conduct discovery and to fully brief the choice-of-law issues in this case. Because there has been substantial dispute in this action regarding the choice-of-law issues, Plaintiffs suggest that it would be appropriate for this Court to allow the parties to brief these issues and to obtain a definite determination from this Court regarding which state's law will apply to particular issues within this case. In this regard, Plaintiffs suggest that it is not appropriate for this Court to address the choice-of-law issue in the context of a motion to dismiss. Clearly, Plaintiffs are at a substantial disadvantage to fully address the choice-of-law issues in this case at the present time because Plaintiffs have not been able to conduct any discovery pertaining to the activities of Defendant that might be pertinent to that analysis. Given the lack of a factual record on this issue, and Defendant's continuing vacillation over which state's law applies, Plaintiffs contend that it would be appropriate to fully brief this issue before this Court following discovery.

Finally, Plaintiffs suggest that they should be allowed to file a sur-reply or to further brief the choice-of-law issue as a simple matter of equity and fairness. Due to Defendant's continual change of position on this issue, it is difficult for Plaintiffs to adequately address Defendant's arguments because Plaintiffs are essentially aiming at a moving target. Furthermore, to the extent that Defendant is arguing both that Delaware law applies and that Plaintiffs cannot state their consumer protection claim under Delaware law, this Court should reject that argument on the basis that the contractual choice-of-law provision, if so construed, is unconscionable and unenforceable.

**WHEREFORE**, Plaintiffs respectfully request that this Court grant Plaintiffs leave to file a Sur-Reply regarding Defendant's Motion to Dismiss and/or to conduct discovery on and to brief the choice-of-law issues in this case.

Respectfully submitted,

/s/ Christopher J. Curtin

Christopher J. Curtin  
DE Bar Id. No. 0226  
Erisman & Curtin  
629 Mount Lebanon road  
Wilmington, Delaware 19803  
Phone: (302) 478-5577  
Facsimile: (302) 478-5494  
Email: ccurtin659@aol.com

and

/s/ Barry R. Grissom

Barry R. Grissom, Esq.  
KS Bar. Id. No. 10866  
7270 W. 98th Terrace  
Building 7, Suite 220  
Overland Park, Kansas 66212  
Phone: (913) 341-6616

and

Bryson R. Cloon  
KS Bar. Id. No. 08660  
MO Bar. Id. No. 36843  
Cloon Law Firm  
11150 Overbrook Road  
Leawood, KS 66211  
Phone: (913) 661-9600  
Facsimile: (913) 661-9614

and

B. Joyce Yeager, Esq.  
KS Bar. Id. No. 18932  
7270 W. 98th Terrace  
Building 7, Suite 220  
Overland Park, Kansas 66212  
Phone: (913) 648-6673

and

Michael W. Blanton,  
MO Bar. Id. No. 46490  
Swanson Midgley, LLC  
2420 Pershing Road, Ste. 400  
Kansas City, Missouri 64108  
Phone: (816) 842-6100

COUNSEL FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I, Christopher J. Curtin, Esq., hereby certify that on February 8, 2006, I electronically filed the foregoing Motion to Appoint Interim Class Counsel with the Clerk of the District Court using CM/ECF, which will send notification of such filing to the following:

William M. Lafferty, Esq.  
Jerry Clyde Harris, Jr., Esq.  
Morris Nichols Arsht & Tunnell  
1201 N. Market St.  
Wilmington, DE 19801

ERISMAN & CURTIN

/s/ Christopher J. Curtin  
Christopher J. Curtin  
DE Bar Id. No. 0226  
Erisman & Curtin  
629 Mount Lebanon road  
Wilmington, Delaware 19803  
Phone: (302) 478-5577  
Facsimile: (302) 478-5494  
Email: ccurtin659@aol.com

DATE: February 8, 2006